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SUPREME COURT OF THE UNITED STATES.

No. 199.

THE UNITED STATES, APPELLANTS,

vs.

SALVADOR ESPINOSA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the proceedings in case No. 355, *Salvador Espinosa, claimant*, vs. *The United States, defendant, for the place named Bolsa de los Escarpinos.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this twenty-second day of September, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Salvador Espinosa, for the place named "Bolsa de los Escarpinos," was presented and ordered to be filed and docketed with No. 355, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *December* 30*th*, 1852.

In case No. 118, Salvador Espinosa, for the place named "Bolsa de los Escarpinos," the deposition of Teodoro Gonzales, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with document marked H. J. T., No. 1, annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *March* 23*d*, 1853.

In the same case, the deposition of José Abrego, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *August* 10*th*, 1853.

On motion of the United States law agent, case No. 355 was ordered to be placed on the trial docket.

SAN FRANCISCO, *Aug.* 11*th*, 1853.

Case No. 355 called: submitted on briefs on both sides, and taken under advisement by the board.

SAN FRANCISCO, *December* 20*th*, 1853.

In the same case, Commissioner Thompson Campbell delivered the opinion of the board confirming the claim.

(Vide page 23d of this Transcript.)

Petition

To the U. S. Board of Land Commissioners for the ascertainment and settlement of land claims in California.

Your petitioner, Salvador Espinosa, a native of Mexico and citizen of California, respectfully shows:

That on the seventh of October, A. D. 1837, he presented his petition to Juan B. Alvarado, then governor of Alta California, praying for a grant of the tract of land known as La Bolsa de los Escarpinos.

That thereupon the said governor, having obtained the requisite information in regard to the subject and object of said petition, by a decree dated on the 7th of October, A. D. 1837, declaring your petitioner the owner of the said tract of land, duly granted the same to your petitioner in full ownership.

That said decree was written upon the margin of said petition, and was returned to your petitioner.

That in pursuance of a direction contained in said decree, your petitioner in due form applied for juridical possession and measurement of said tract to the proper alcalde, viz: to Teodoro Gonzales, to that end duly empowered, who, on the 22d of November, A D. 1837, in due form of law, gave to your petitioner juridical possession and measurement of said land, and made an official record thereof.

That said petition and decree, the said record of juridical possession and measurement, with decree of said tract, all attached together, were thereupon given by said alcalde to your petitioner, to serve him as monuments of title to said land.

That your petitioner had been the owner of said tract of land by virtue of a grant from the Mexican government, and had held quiet and exclusive possession of the same for fourteen years previous to his said petition to Alvarado, and that this having been made so to appear, and having been so official declared by said Alvarado, so being governor of California, the said decree was given, and the said proceedings in and about the juridical possession were had, more for the purpose of furnishing to your petitioner additional monument of title to said land, than to constitute an initiate and original title thereto.

That the said tract is situate in the county of Monterey; that it contains two square leagues, and that the location and boundaries of the same are fully set forth and described in the said record of juridical possession, which is herewith filed, with a translation thereof.

That your petitioner (have) has been in quiet possession of said land for the last twenty-nine years, and that he knows of no conflicting claim thereto.

Your petitioner, therefore, presenting the said monuments of title, with translations herewith, respectfully prays that his said claim and title to said tract of land may be confirmed by your honorable board.

CLARK, TAYLOR, & BEECH,
Att'ys for Petitioner.

Filed in office Sept. 22d, 1852.

GEO. FISHER, *Sec'y.*

Deposition of José Abrego.

SAN FRANCISCO, *March 23d*, 1853.

On this day, before Com'r Hiland Hall, came José Abrego, a witness in behalf of the claimant, Salvador Espinosa, petition No. 355, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

Questions by Claimant.

Quest. 1st. What is your name, age, and place of residence?

Ans. My name is José Abrego; my age forty years, and I reside at Monterey.

Quest. State what you know in regard to the possession and occupancy of the land petitioned for by Salvador Espinosa, called Bolsa de los Escarpinos?

Ans. I have been acquainted with the land petitioned for during the last 18 years; during all that time it has been in the exclusive possession and occupation of the petitioner and his family; they having lived upon it during all that time, cultivated and improved it for the usual purpose of a rancho.

JOSE ABREGO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office March 23rd, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Teodoro Gonzales.

SAN FRANCISCO, *December 30th*, 1852.

On this day, before Com'r Harry J. Thornton, came Teodoro Gonzales, a witness in behalf of the claimant, Salvador Espinosa, petition No. 355, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

Questions by Claimants.

Quest. 1st. What is your name, age and place of residence?

Ans. My name is Teodoro Gonzales; my age forty-nine years; my residence is the city of Monterey.

Quest. 2d. Look at the original document now shown you, purporting to be an original petition for the grant of the land called Bolsa de los Escarpinos, made by Salvador Espinosa, dated Monterey, 7th October, 1837, on the margin of said petition, the original grant made by Alvarado, dated the same day and place, a record of juridical possession and map thereto attached, which said original document, marked Exhibit 1, is attached to your deposition and now filed in this cause. State what you know concerning the said document, and the signatures, and whether they are genuine?

Ans. I know the signatures to this document; I know them to be genuine. I was the alcalde who gave juridical possession of the land

called Bolsa de Escarpinos to Salvador Espinosa. I have seen this document at the very time when I gave said juridical possession; it was then presented to me by this same Salvador Espinosa.

The decree of Alvarado, on the margin of the first page of said document, was already there at the time when it was first presented to me.

The map is the original map made when juridical possession was given.

TEODORO GONZALES.

U. S. law agent present.

Sworn to and subscribed before me this 30th of Dec., 1852.

HARRY J. THORNTON,
Com'r, &c.

Filed in office Dec. 30th, 1852.

GEO. FISHER, *Sec'y.*

A certified copy of a Record from the archives of Monterey.

Salvador Espinosa.

En viente y dos de Noviembre, de mil ochocientos treinta y siete, se dio posesion juridica al Ciudadano Salvador Espinosa del terreno nombrado Bolsa de los Escarpinez, constante depoco menos de dos sitios de ganado mayor, y para constancia se toma razon en este libro, y lo fimé con los de as'a.

TEODORO GONZALES.

De as'a—FLORENCO SERRANO,
De as'a—ESTEBAN MUNRAS.

Translation.

Salvador Espinosa.

On the twenty-second of November, one thousand eight hundred and thirty-seven, juridical possession was given to the citizen Salvador Espinoza of the land named Bolsa de los Escarpines, containing a little less than two square leagues, and for security account is taken in this book, and I signed it with those of assistance.

THEODORE GONZALES.

Wit.—FLORENCIA SERRANO,
ESTEBAN MUNRAS.

OFFICE OF COUNTY RECORDER,
MONTEREY COUNTY, STATE OF CALIFORNIA.

I, James H. Gleason, county recorder of the county and State before written, and, as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the writing on this sheet in the Spanish language exhibits a true copy of a page of writing in a stitched pamphlet entitled and bearing on its cover 1835, Libro. de poseciones de

1835, y signe 1837, y del año 1840, y signe en el año de 1842, the same being now on file and forming a part of the records of this office.

In testimony whereof I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of Monterey, this thirty-first day of October, 1853.

[Recorder's Office. Monterey co., Cal.]

J. H. GLEASON,
County Recorder, Monterey county.

Filed in office Nov. 26th, 1853.

GEO. FISHER, *Sec'y.*

Espediente.

Promovido por el Ciudadano Salvador Espinosa, pidiendo posecion juridica al terreno de su propriedad llamado, Bolsa de los Escarpinos.

1837.

Sr. Gobernador.—Salvador Espinosa recino de la jurisdicion de este puerto ante V. E. conforme haza lugar en derecho digo, que hace el termino de cerca de catorce años que me fue concedido por el antiguo gobierno el parage conocido con el nombre de la Bolsa de los Escarpines el que se halla colindante al que posee mi hermano Trinidad, llamado la sienega de las ratas ambos en iguales circunstancias, hemos fomentado unidos con nuestros propriedades nuestras poseciones y como hallamos ocundo varias veces a la oficina del gobo. por nuestros constancias para mantener en nuestro poder los documentos necesarios y no se han encontrado en los archivos suplico a V. S. se sirva mandar se me de posecion en divida firma del dicho terreno, que es la parte que me pertenece a cuzo efecto acompaño el diseño correspondiente. Por tanto A. V. E. suplico se sirva proveer como pido en que recivire gracia disimulando que no haza esta en papel sellado por no haberlo en la poblacion. Juro no ser de malicia, &c.

Monterey, Oct're 7, de 1837.

SALVADOR ESPINOSA.

Señor Alcalde de Constitucional de 1o Ynstancia:

Salvador Espinosa, ante la Notaria Justificacion de V. S. y como mas aya lugar hace presente que segun lo dispuesto p'a el gobierno lopedido en esta me solicitud p'a que por sus sabias disposiciones se le de el curso conveniente por tanto á V. E. con el debido respeto suplico haga se tomen las providencias q'l sean necesarias p'a su plena satisfacion del que rendidamente representa.

Monterey, 8 de Octobre, de 1837.

SALVADOR ESPINOSA.

Monterey, *Nove.* 21, *de* 1837.

Por presentado y admitido prosedase por mi el presente alcalde á la medicion señelamiento de linderos y judicial posecion que solicita el ciudadano Salvador Espinosa señalandose para su verificacion el dia

22 del presente, y para lo cual se citaran con voletas de comparecido á los colindantes, asi yo el alcalde 1a en turné de esta demarcacion lo providencié mandé y firmé con los de assistencia.

TEODORO GONZALES.

Esteban Murcia, de as'a.
J. Serrano, de as'a.

Monterey, *Oct'br* 7, *de* 1837.

Por cuanto á que el interesado en esta representacion haposido quieta y pacificamente por el termino de cerca de catorce años, el terreno conocido con el nombre de la Bolsa de los Escarpines, confuertes titulos y conocimiento de los antignos gobernadors en esta California cuyos documentos indica haberse estraviado en la officina respectiva que por lales motivos se encuentra sin los seguridades convenientes par apermancer en su propriedad, he venido p'a el presente acceder á su pretencion a cuyo efecto dicho interesado cumplira los condiciones siguentes: 1a, se presentara con este decreto al Juez civil pediendo la posecion juridica del enunciado parage. 2d, dicha autoridad con annencia de los colindantes respectivas hara me dir el terreno conforme a ordenanza y al diceño espresado el numero de varas que resulten a su favor.

4a. Concluida esta operacion volvera este espediente al gobierno para que la parte interesado esciva el titulo correspondiente y se archiva los documentos.

ALVARADO.

En la fh'a se le notifico el antecedente ante al Ciudadano Salvador Espinosa, y de el entidido dijo lo oye que seda par citado y lo firmo con migo y los de asistencia.

TEODORO GONZALEZ.

De as'a: T'o Serrano.
De as'a: Esteban Murcia.

En la misma f'ha celebraron las voletas ye se manden en auto anterior y para constancia lo anoto y rubrico.

R. Rancho de los Escarpines, Nb're 22 de 1837.—Presente los colindantes, D. Trinidad Espinosa, y D'n Simeon Castro, nombre por medidores á los ciudadanos Juan Capistrano Lopez, y José Antonio Abisa, para la medida senalamiento de linderos y posecion del Ciudadano Salvador Espinosa, quienes previa la acceptacion y juramento procedan al desempeño de su encargo, asi yo el alcalde, 1a en turno de Monterey, y su jurisidicion lo decreti mandé y firmé con los de asistencia.

TEODORO GONZALES.

Esteben Murcia, de as'a.
T'o Serrano, de as'a.

En la misma fecha presentes los Ciudanos Juan Capistrano Lopez, y José Antonio Alvisa, se les notifico su nombramiento en anto y de el

entendidas dijeron lo oyen que acceptabon y acceptaron jurando por Dios Mestro Señor, y la señal de la Santa Cruz, confirmé á derecho de usarlo fiel y legalmente á su leal saber, y entender sin fraude contra persona alguna y no firmaron por no saber y lo hise yo con los de asistencia.

TEODORO GONZALES.

ESTEBEN MUNXA, de as'a.
T'o SERRANO, de as'a.

En el mismo parage dio, mes, y año, siendo los nueve de la mañana, y el presente alcalde primero enturno mando á los medidores nombrados se dispongan para la medida de las tierras se le á de hacer al Ciudadano Salvador Espinosa, y puestos en el rincon de la Bolsa de los Escarpines, que queda al P. se comensaron las medidas tirando el cordel para el O. hasta los linderos de al Nicolas Alviso, se midieron dos cientos treinta y tres cordeles, y despues puestos en los linderos de D'n Trinidad Espinosa hacia el sur se tiro el cordel para, el N. hasta el primer sancelito à la entrada de la Cañada de San Miguel, y se midieron setenta cordeles de cincuenta varas en cuzos mediciones, mandé se pusieran las majoneras á acostumbrados para señelas los linderos que le pertenessen. El terreno medido corresponde à dos sitios de ganado mayor, y lo firmaron comigo los colindantes el interesado y los de asistencia.

TEODORO GONZALES,
SIMEON CASTRO,
JOSE TRINIDAD ESPINOSA.

T'o SERRANO, de as'a.
ESTEBEN MUNXA, de as'a.

En el rancho de los Escarpines á los viente y dos dias del mes de Noviembre, de mil ochocientos treinta y siete yo el alcalde, primero en turno de la municipalidad de Monterey, y su jurisdiccion despues de practicadas, las medidas del mencionavo rancho por los que resulto tener poco mas de un sitio de ganado mayor, y presentes los colindantes D. Trinidad Espinosa, y D'n Simeon Castro, siendo estos conformes con lo demos que consta de autos mandé q'l entrase en posecion del mencionado rancho, el Ciudadano Salvador Espinosa, bajo las medidas citadas, y formalidades acostumbrados en estos casos, lo que verifico immediatamente anancando yerbas tirando piedras, y haciendos otras demostraciones conu dueño, y unico posedor del terreno del que se le hadado posecion juridica cuya validacion, autorise firmando con los colindantes el interesado y los de asistencia.

TEODORO GONZALES,
SIMEON CASTRO,
JOSE TRINIDAD ESPINOSA.

T'o SERRANO, de as'a.
ESTEBAN MUNXAS, de as'a.

Tomese razon en el libro deposeciones y devuelvase este espediente original al interesado para que le sirva de titulo, asi yo el alcalde primero en turno lo decreté, mandé, firmé con los de asistencia.

TEODORO GONZALES.

T'o SERRANO, de as'a.
ESTEBEN MUNXAS, de as'a.

Se tomo razon de este espediente en el libro de poseciones á fojas dica frente, en la misma fha y se devolvio el espediente original al ciudadano Salvador Espinosa, en 6 fojas utiles en cumplimiento de lo mandado en el antecedente auto, y p'a constancia lo puse per nota q'l rubrique.

Filed in office Dec'r 30th, 1852.

GEO. FISHER, *Secr'y.*

[*For map see original, page* 15.]

A.

Translation of Espediente.

Espediente at the instance of the citizen Salvador Espinoza, asking juridical possession of the tract of land which he owns, called Bolsa de los Escarpines.

(1837.)

To his honor THE GOVERNOR:

I, Salvador Espinoza, a subject of the jurisdiction of this port, come before your honor in due form, and say: That it is now about fourteen years since there was ceded to me by the concinct Government the place known by the name of La Bolsa de los Escarpines, which is bounded on that which my brother Trinidad possesses, called La Sienaga de los Ralas. We two have lived together in similar circumstances with our properties, our possessions; and as we have several times gone to the office of the Government through our anxiety to get into our possession the necessary documents, and as they have not been found in the archives, I supplicate your honor to order that possession of said land—that is, the part which pertains to me—be given to me in due form, to which and the corresponding map accompanies this. Wherefore, may it please your honor, to order that possession of said land—that is, the part which pertains to me—be given me in due form, to which and the corresponding map accompanies this. Wherefore, may it please your honor to grant my request, by which I

shall receive grace; excusing the fact that this is not on stamped paper, for the reason that there is none in this settlement. I swear that I am not moved by malice, &c.

MONTEREY, *Oct. 7th*, 1837.

SALVADOR ESPINOZA.

(Flourish.)

MONTEREY, *Oct.* 7, 1837.

Whereas the party to this petition has occupied quietly and peaceably for the space of fourteen years the land known by the name of La Bolsa de los Escarpines, with its fruits, under title, and with the knowledge of the ancient Government of California, the documentary proofs of which he shows have been mislaid in the proper office, and, therefore, he finds himself without the protection necessary to continue him in his property:

I have thought fit, by these presents, to accede to his petition. Wherefore, said petitioner will comply with the following conditions:

1st. He will present himself, with this decree, to the justice of the peace, asking juridical possession of said place.

2d. Said authority, with the assistance of the respective border owners, will have the land measured according to ordinance and the map, expressing the number of varas which result to the party.

(4th.) 3d. This operation being concluded, he will return this espediente to the Government, that the party interested may receive the title that he asks for, and that the documents may be concluded.

ALVARADO.

To the Constitutional Alcalde of 1st Instance:

Salvador Espinoza, before your honor's well-known justice, and as may be most proper, presents, according to the direction of the Government, the prayer of this his petition, to which may there be given me according to your honor's wisdom the most appropriate disposition. Therefore, with due respect, he supplicates that the necessary action will be taken by which full satisfaction will result to him who humbly petitions.

SALVADOR ESPINOZA.

MONTEREY, *8th of October*, 1837.

MONTEREY, *Nov. 21st*, 1837.

For presented and admitted proceedings will be had by me, the present alcalde, for the final measurement of boundaries and juridical possession, solicited by the citizen Salvador Espinoza, indicating for the performance of this the 22d day of the present month, to which end the bordering land-owners will be duly summoned.

Thus I, 1st alcalde of this jurisdiction, provide, order, and sign, with the attesting witnesses.

TEODORO GONZALES,

Attest: F. LENANOT.

Attest: ESTEBAN MUNRAS.

On this day I made this order known to citizen Salvador Espinoza. He understood it, and acknowledged himself cited, and I sign this with my attesting witnesses.

TEODORO GONZALES.

Attest: F. LERANOT.
Attest: ESTEBAN MUNRO.

On the same day the summons directed by the preceding decree were served, and as evidence I attest and sign.

(Gonzales Flourish.)

RANCHO OF LOS ESCARPINOS, *Nov.* 22*d*, 1837.

Present, the bordering land-owners, Trinidad Espinoza and Simeon Castro. I name for measurers citizens Juan Capistrano Lopez and José Antonio Alvera for the measurement, indication of boundaries and possession of citizen Salvador Espinoza, who, after acceptance and oath, proceeded to the performance of their duty. Thus I, 1st alcalde of Monterey and its jurisdiction, decree, order, and sign, with the attesting witnesses.

TEODORO GONZALES.

Attest: F. LENANOT.
Attest: ESTEBAN MUNRO.

On the same day—present, citizen Juan Capistrano Lopez and José Antonio Alvera—I notified them of their nomination in the decree; and understanding it, they said that they heard it; that they had accepted, and would accept, swearing by God our Lord and the sign of the holy cross, conformably to right, to act faithfully and legally, according to their real knowledge and understanding, without fraud towards any person; and they did not sign, because they did not know how, and I did this with the witnesses.

TEODORO GONZALES.

Attest: F. LENANOT.
Attest: ESTEBAN MUNRO.

Therefore, I, said alcalde, commanded to be brought into my presence the cord with which the land was to be measured, and the said measure, took it, and, with a vara of usual Mexican measure, they measured fifty varas, to make a measuring-cord for the land, and I attest with the witnesses.

TEODORO GONZALES.

Attest: F. LENANOT.
Attest: ESTEBAN MUNRO.

In the same place, day, month, and year, at nine o'clock in the morning, I, the present alcalde, first in rank, commanded the appointed measurers that they should address themselves to the measurement of the land which they were to mark for the citizen Salvador Espinoza, and thereupon in the corner of the Bolsa de los Escarpines, which is

situated to the west, they commenced their measurements, extending the cord towards the east as far as the boundaries of Nicolas Alvera, and there were measured two hundred and thirty-three cords; and after that, standing in the border of Trinidad Espinoza, at the south *the south*, the cord was carried towards the north as far as the first "Sancelito," at the entrance of the Cañada de San Miguel, and there were measured seventy cords of fifty varas; in which measurements I commanded that they should place the accustomed landmarks to indicate the boundaries appertaining to the land. The land measured amounts to a little less than two square leagues, and this was attested by the bordering land-owners, the party, the witnesses, and myself.

TEODORO GONZALES.
JOSE TRINIDAD ESPINOZA.
SIMEON CASTRO.

Wit: ——— ———.
Wit.: ESTEBAN MUNRO.

In the rancho de los Escarpines, on the twenty-second day of the month of November, eighteen hundred and thirty-seven, I, the first alcalde in the land of the municipality of Monterey and its jurisdiction, after having accomplished the measurement of the rancho, from which it resulted that it contains a little more than one square league, and there being present the bordering land-owners, Trinidad Espinoza, Simeon Castro, and they having conformed with all the decree required, I commanded that citizen Salvador Espinoza should enter into possession of said rancho pursuant to the measurements, rites, and formalities accustomed in such cases, which he immediately did, pulling up grass, throwing stones, and making other demonstrations, as owner and sole possessor of the land of which juridical possession had been given him, whose validity I attested, signing with the bordering owners, the party, and the assistants.

TEODORO GONZALES,
JOSE TRINIDAD ESPINOZA,
SIMEON CASTRO.

Ass.: F. LENANOT,
Ass.: ESTEBAN MUNRO.

Let an entry be made in the book of possessions, and let this original espediente be returned to the interested party, that it may serve him for a title. Thus I, the first alcalde in the land, decree, order, and sign with the assistants.

TEODORO GONZALES.

Ass.: F. LENANOT,
Ass.: ESTEBAN MUNRO.

This espediente has been entered in the book of possessions at folio ten, front; on the same day I returned the original espediente to citizen

Salvador Espinoza, in 6 folios, used in compliance with the requirements of the antecedent order, and, for certainty, I make it known and subjoin my flourish.

(Flourish of Gonzales.)

(Diseno of Premises.)

Filed in office Sept'r 22d, 1852.

GEO. FISHER, *Sec'y.*

SALVADOR ESPINOZA
vs.
THE UNITED STATES.

Bolsa de Escarpines. A little less than two leagues.

Opinion of the Board by Comr. Campbell.

The claim in this case is founded on a petition of the claimant made to Governor Alvarado on the 7th day of October, 1837, and a marginal concession made by said governor on the same day.

The petitioner represents in his said petition, that about fourteen years before that time the ancient government had ceded to him a certain place known by the name of La Bolsa de los Escarpines, which bordered on his brother's tract; that he had gone to the office of the government several times for the purpose of obtaining the necessary documents or evidences of his title; that they could not be found in the archives; he therefore prayed that the possession of the part which pertained to him be given to him in due form.

The governor, in his concession, recites, that as the party had enjoyed the fruits of said place for the space of fourteen years, with the knowledge of the ancient governors of California, and inasmuch as his title-papers had been mislaid, and could not be found, he thought fit to concede to his petition, with the understanding that he would comply with the conditions which were annexed. The first condition required him to solicit the proper notice for judicial possession of the premises. The second condition required the officer making the measurement to express the number of varas which it contained. The third condition required the officer to return the espediente in order that it might be archived.

The record of juridical measurement duly proved has been placed on file as evidence in the cause.

The party has also proved by competent testimony, that the petitioner, with his family, has for the last eighteen years occupied, improved, and lived upon the land in question, and that he used it for the usual purposes of a rancho.

There is no proof that any approval was ever made by the departmental assembly.

This case presents some new features, and although the proceedings

are in conformity with the regulations of 1828, the governor has not adopted the usual forms. The facts recited by the governor in his commission show merits of the very strongest character. The party had not only obtained a title from the Spanish Government, but he had occupied without interruption for the space of fourteen years the same land. The governor under the circumstances conceded his petition, which was merely that possession might be given him. This concession was delivered to the party, and in obedience to the requirements of the first condition the petitioner presented his petition to the proper magistrate soliciting the possession of the premises, which was duly given, and the proper measurement made. This was all the party in interest was required to do. Actual residence upon the land, cultivation, and improvement, is proved to have continued for the last eighteen years, a more meritorious case could not be presented for the consideration of this commission. The juridical measurement does not define with great accuracy the boundaries, but with the aid of the map on file, taken in consideration with the long and notorious possession of the claimant, I think the premises can be located without much difficulty. We are therefore of opinion that the claim in this case should be confirmed.

Filed in office Dec. 20th, 1853.

GEO. FISHER, *Sec'y*.

SALVADOR ESPINOZA
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged that the claim of the said petitioner is valid, and it is therefore decreed the same be confirmed; the lands of which confirmation are hereby made, are known by the name of Bolsa de Escarpines, and are the same now occupied by Salvador Espinoza, and are bounded and described as follows, to wit: commencing at the first sancelito, at the entrance of the Cañada de San Miguel, and running thence south three thousand five hundred varas to the borders of the land owned by Trinidad Espinoza; thence running west eleven thousand six hundred varas; thence running north three thousand five hundred varas; thence running east to the place of beginning, eleven thousand six hundred and fifty varas. Containing in all a little less than two square leagues. Reference for further description to be had to a map which is made a part of document, Doc. H. J. T. No. 1, and filed in this case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office Dec. 20th, 1853.

GEO. FISHER, *Sec'y*.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-six pages, numbered from 1 to 26, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 355 on the docket of the board, wherein Salvador Espinoza is claimant against the United States for the place known by the name of Bolsa de los Escarpines.

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco,
[G. F.] California, this twelfth day of September, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify, that the foregoing 27 pages, numbered from 1 to 27, both inclusive, contain a full, true, and correct copy of transcript No. 355 filed in this office, wherein Salvador Espinoza is appellee, and the United States are appellants, for La Bolsa de los Escarpinos.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Los Angelos, California,
[L. S.] this twentieth day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

C. E. CARR, *Clk.*

UNITED STATES DISTRICT COURT,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES.

SALVADOR ESPINOZA, appellee, ads. THE UNITED STATES, appellant. } Docket No. 67.—Transcript No. 355.

Be it remembered, that on the 16th day of September, A. D. 1854, in the district court of the United States for the southern district of California, the following proceedings were had, to wit:

A duly certified transcript of the proceedings and decision, and the papers and evidence upon which the said decision was founded, of the commissioners to ascertain and settle the private land claims in the State of California, when sitting as a board in the case wherein Salvador Espinoza is the claimant against the United States for the place named La Bolsa de los Escarpinos, was received, and filed, and docketed with No. 67, and is as follows, to wit:

(Vide page 1.)

LOS ANGELES, *Jan'y* 10, 1855.

In case No. 67, Salvador Espinosa for "La Bolsa de los Escarpinos," notice of appeal from the att'y gen'l of the United States, was filed.

(Vide page 3.)

LOS ANGELES, *Aug. 13th*, 1855.

In same case petition of the United States for review was filed.

(Vide page 4.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Sept. 20th*, 1855.

In same case the answer of Salvador Espinosa was filed.

(Vide page 12.)

LOS ANGELES, *Sept. 24th*, 1855.

In same case the opinion of the court was delivered confirming the claim, and the following decree entered.

(Vide page 13.)

LOS ANGELES, *Oct. 18th*, 1855.

In same case, on motion of P. Ord, U. S. att'y, the following order was made and filed.

(Vide page 14.)

Order of Appeal.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
WASHINGTON, *30th November*, 1854.

SALVADOR ESPINOZA
vs.
THE UNITED STATES. } 355.

You will please take notice, that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of August, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Filed Jan'y 10th, 1855.

C. E. CARR, *Cl'k.*

Petition of Review.

In the District Court of the United States for the southern district of California.

SALVADOR ESPINOZA ads. THE UNITED STATES. } No. 67.—Transcript No. 355.

To the honorable Isaak S. K. Ogier, judge of the district court of the United States for the southern district of California.

The petition of Pacificus Ord, (of Los Angeles county,) attorney of the United States for the southern district of California, who petitions in this behalf for the United States, and being present here in court in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit, on or about the 22d day of September, A. D. 1852, Salvador Espinoza presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called the Bolsa de los Escarpinos, in the county of Monterey, in the words and figures following, viz:

"Your petitioner, Salvador Espinoza, a native of Mexico and citizen of California, respectfully shows:

"That on the seventh of October, A. D. 1837, he presented his petition to Juan B. Alvarado, then governor of Alta California, praying for a grant of the tract of land known as La Bolsa de los Escarpinos.

"That thereupon the said governor, having obtained the requisite information in regard to the subject and object of said petition by a decree, dated on the 7th of October, A. D. 1837, declaring your petitioner the owner of the said tract of land, duly granted the same to your petitioner in full ownership.

"That said decree was written upon the margin of said petition, and was returned to your petitioner.

"That in pursuance of a direction contained in said decree, your petitioner, in due form, applied for juridical possession and measurement of said tract to the proper alcalde, viz: to Teodoro Gonzales, to that end duly empowered, who, on the 22d of November, A. D. 1837, in due form of law, gave to your petitioner juridical possession and measurement of said land, and made an official record thereof.

"That said petition and decree, the said record of juridical possession and measurement, with deseño of said tract, all attached together, *we* thereupon given by said alcalde to your petitioner, to serve him as muniments of title to said land.

"That your petitioner had been the owner of said tract of land by virtue of a grant from the Mexican government, and had held quiet and exclusive possession of the same for fourteen years previous to his said petition to Alvarado, and that this having been made so to appear, and having been so official declared by said Alvarado, so being governor of California, the said decree was given, and the said proceedings in and about the juridical possession were had, more for the purpose of furnishing to your petitioner additional muniments of title to said land, than to constitute and initiate an original title thereto.

"That the said tract is situate in the county of Monterey; that it contains two square leagues, and that the location and boundaries of the same are fully set forth and described in the said record of juridical possession, which is herewith filed, with a translation thereof.

"That your petitioner *have* been in quiet possession of said land for the last twenty-nine years, and that he knows of no conflicting claim thereto.

"Your petitioner, therefore, presenting the said monuments of title, with translations, herewith respectfully prays, that his said claim and title to said tract of land may be confirmed by your honorable board."

Your petitioner further represents, that thereafter, to wit, on the 20th day of December, A. D. 1853, the said commissioners confirmed, by final decree, the said claim of the said Salvador Espinoza in the words and figures following, to wit:

"In this case, on hearing the proofs and allegations, it is adjudged, that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed. The lands of which confirmation are hereby made are known by the name of Bolsa de Escarpinos, and are the same now occupied by Salvador Espinoza, and are bounded and described as follows, to wit: Commencing at the first sancelito at the entrance of the Cañada de San Miguel, and running thence south two thousand five hundred varas, to the borders of the land owned by Trinidad Espinoza; thence running west eleven thousand six hundred varas, thence running north three thousand five hundred varas, thence running east to the place of beginning, eleven thousand six hundred and fifty varas—containing in all a little less than two square leagues. Reference for further description to be had to a map, which is made a part of document, Doc. H. J. T., No. 1, and filed in this case."

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON. } *Commissioners.*

That thereafter, to wit, on the 16th day of September, 1854, a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 67, (Transcript No. 355); reference to which it is prayed may be had, and made a part of this petition.

That on the 30th day of August, A. D. 1854, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said commissioners in said cause, (No. 355,) and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 10th day of January, A. D. 1855, the said Attorney General of the United States filed, or caused to be filed, on behalf of the United States, a notice with the said clerk of said district court for the southern district of California, that the appeal,

in said cause of Salvador Espinoza vs. The United States, from the decision of the said commissioners to ascertain and settle private land claims in the State of California, in the district court of the United States for the southern district of California, would be prosecuted by the United States.

Your petitioner further represents, that the said land, claimed as aforesaid, is within the jurisdiction of this honorable court.

And your petitioner further represents and insists, that the said decree of said commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause, now on appeal from said commissioners to this honorable court.

And your petitioner further represents, that the said claim is invalid and the said decree erroneous, on the following grounds:

I. And the said attorney denies all and singular each and every allegation in the said petition of said claimant to said commissioners of said date; and he further denies, that any grant for said land was ever made, as alleged in said petition; and he denies further, that the said claimant has shown any or sufficient evidence of the validity of the said claim.

II. That the said alleged grant of Governor Alvarado was made in violation of the 4th article of the Colonization law of Mexico of the 18th of August, A. D. 1824, in this, that the land granted, as alleged by claimant, was and is within ten leagues of the sea-coast; and there is no evidence shown by claimant, that the supreme general executive power of Mexico previously approved of the colonization of the public lands in Upper California, lying within ten leagues of the sea-coast; and it is denied that such previous consent of said supreme general executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant, the said land claimed as aforesaid was occupied by and in the possession of the Missions of the Territory of Upper California, and it was held and occupied particularly by the Mission of , and could not, therefore, be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with, the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the territories of Mexico of the 21st November, A. D. 1828.

V. That there is no sufficient evidence that the said claimant was or is the owner of the land claimed in virtue of a grant from the Mexican government, given about fourteen years previous to the date of his petition to the governor, on the 7th of October, 1837; and it is denied that the said claimant ever had, or received about said time, a grant from said government for said land, as alleged by him.

VI. That there is no sufficient evidence that the said claimant has occupied quietly and peaceably the said land for about fourteen years previous to the said 7th of October, 1837; and it is denied that he has been in the quiet and peaceable occupation of said land for said length

of time, or for twenty-nine years, as alleged in his said petition to said commissioners.

VII. That the said claimant wholly fails to show any valid or definite grant or title for said tract of land claimed by him as aforesaid; that the document shown by him purporting to be signed by "Alvarado," and dated October 7th, 1837, is not a grant; that it is nothing more than an order of said "Alvarado" directing that the said claimant should solicit of the proper civil magistrate the possession of the place called Bolsa de los Escarpinos, and that it should be measured according to the map, and the ordinance and the number of varas given therein; and that thereafter the party interested should return the proceedings (espediente) for record, and that the proper titles might thereupon issue.

VIII. That the said order of said "Alvarado," of said date, contains no description of the locality, extent or boundaries of the land; and it is vague, indefinite and void for uncertainty. That said order is not upon stamped paper; and no cause is assigned therein for its being written on common paper.

IX. That there is no evidence that the map shown by claimant is the same map referred to in the petition of said claimant to the governor, of the date of the 7th October, 1837; or that it is the same one referred to in the said order of said Alvarado of said date. And it is denied that the said map shown by claimant is the original map referred to in said petition of said claimant, or order of said "Alvarado."

X. That the said "Alvarado" had no lawful authority to make and deliver to said claimant any grant, decree or order, such as the one alleged and shown by said claimant.

XI. That the alleged application of said claimant to the alcalde for the juridical possession of said land, is not upon stamped paper, and no cause is shown therein for its being upon common paper.

XII. That the alleged juridical act of survey and possession of said land, by Teodoro Gonzalez, dated 22d November, 1837, is not upon the lawful stamped paper, and no cause is assigned therefor in said alleged act; that it is not made according to the said order of said "Alvarado," nor according to the ordinance or law; that it does not specify the number of varas contained in the land pretended to have been surveyed by him, as required by said order; that it contains no certain description of the locality, extent or boundaries of the land so that it can be identified and surveyed; that it is vague, indefinite and void for uncertainty.

XIII. That there is no evidence that the said claimant complied with the condition of the said order of said "Alvarado," which required him to return the proceedings (expediente) to the office of the government for record, so that the proper title might issue. And it is denied that the said claimant ever complied with the said condition of said order by returning to the government said proceedings (expediente) as required; and that by his said refusal or neglect to perform said condition of said order, he abandoned, or lost, his right to said land, if he ever had any.

And no sufficient proof having been made by said claimant of the allegations of his said petition, or in support of his said claim, filed as aforesaid, no decree ought to have been made or grounded thereon; but the said petition ought to have been dismissed, and said claim rejected by said commissioners, upon the grounds aforesaid.

And the said claimant having no valid right or title derived from the Spanish or Mexican Government to the said land claimed by him as aforesaid, the lawful right or title in and to the said land was acquired by, and it now belongs to, the said United States, by virtue of the treaty of peace, friendship, limits, and settlement with the republic of Mexico, dated at the city of Guadalupe Hidalgo, February 2nd, A. D. 1848.

Wherefore, the said Pacificus Ord, Attorney of the United States for the southern district of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," approved march 3d, 1851, and the laws and statutes in such case made and provided, prays that the said Salvador Espinoza may be served with a copy of this petition, and that this honorable court will review the said decision or final decree of confirmation of said commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Salvador Espinoza, for said land claimed and confirmed as aforesaid; and that the same may be decreed invalid, and all such other orders, judgments, or decrees, as may be just, with costs and general relief.

(Sgd.) P. ORD,
Atty. of the United States for the southern district of California.

Filed Aug. 13th, 1855.

C. E. CARR, *Clk.*

Answer.

District Court of the United States, southern district of California.

SALVADOR ESPINOZA ads. THE UNITED STATES. } No. 67.

Salvador Espinoza, the claimant and appellee in the above entitled cause, in answer to the petition of review filed by the United States, herein avers, that the title of said claimant to the tract of land claimed is valid.

He therefore prays that the court may affirm the decision of the *decision of the* Board of Land Commissioners, and decree the said title to be valid.

J. CLARKE,
Atty. for Claimant.

Filed Sept. 20th, 1855.

(Sgd.) C. E. CARR, *Clk.*
By J. W. ROSS, *Dep.*

Decree.

SALVADOR ESPINOSA, appellee, ads. THE UNITED STATES, appellants. } No. 67.

District Court United States for the southern district of California.

B. de los Escarpinos.

This cause coming on to be heard on appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved 3d of March, 1851, on a transcript of the decision and proceedings, and of the papers and evidence on which such decision was founded; and it appearing to the court that said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the said decision be in all things affirmed; and it is further ordered, adjudged, and decreed, that the claim of the appellee to a certain tract of land known by the name of Bolsa de Escarpinos is valid—the said land being the same now occupied by the said appellee, and bounded as follows, viz:

Commencing at the first sancelito at the entrance of the Cañada de San Miguel, and running thence south three thousand five hundred varas to the borders of the land owned by Trinidad Espinoza; thence running west eleven thousand six hundred varas; thence running north three thousand five hundred varas; thence running east to the place of beginning eleven thousand six hundred varas, containing in all a little less than two square leagues. Reference for further description being had to the original map of file in the transcript of the record in this case; and it is further ordered, adjudged, and decreed, that the claim of appellee to said land is hereby confirmed.

M. HALL McALLISTER,
Judge Circuit Court U. S. for the districts of California.

Filed Sept. 24th, 1855.
(Signed) C. E. CARR, *Cl'k.*

Order of Appeal.

In the U. States District Court for the southern district of California.

Special term, Los Angeles, 1855.

SALVADOR ESPINOZA, app'ee, ads. THE UNITED STATES, app'ts. } No. 67.—Transcript No. 355.

On motion of P. Ord, attorney of the United States for the southern district of California; it is ordered by the court, that an appeal be granted the United States to the Supreme Court of the United States,